

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1078

Introduced by Senator Jackson

February 17, 2016

An act to amend Sections 1281.85 and 1281.9 of, and to add Section 1281.65 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that *as to the proposed neutral arbitrator would be able to be impartial*. *neutral arbitrator's impartiality*. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a party. The bill would prohibit the solicitation of a party or lawyer for a party during the pendency of the arbitration. The bill would also

prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment, offers of new professional relationships, or offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending arbitration.

~~Existing law requires a person serving as a neutral arbitrator pursuant to an arbitration agreement to comply with the ethics standards for arbitrators adopted by the Judicial Council, as specified: a court to vacate an arbitration award if it determines certain that a specified circumstance exists.~~

This bill would authorize a party to recover arbitration proceeding costs from a private arbitration company if the arbitration award is vacated ~~because of a violation of the Judicial Council ethical standards or a violation of the disclosure requirements described above: by the court based on a determination of the existence of one of these circumstances.~~ The bill would also authorize a party to petition the court to recover arbitration proceeding costs from a private arbitration company if the arbitrator is dismissed during the pendency of the arbitration because of a violation of the Judicial Council ethical standards or a violation of the disclosure requirements described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1281.65 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1281.65. From the time of appointment until the conclusion
- 4 of the arbitration, an arbitrator shall not entertain or accept either
- 5 of the following:
- 6 (a) Any offers of employment or new professional relationships
- 7 as a lawyer, expert witness, or consultant from a party or lawyer
- 8 for a party in the pending arbitration.
- 9 (b) Any offers of employment as a dispute resolution neutral in
- 10 another case involving a party or lawyer for a party in the pending
- 11 arbitration unless all parties to the pending arbitration, including
- 12 the lawyers in the arbitration, have conferred and agreed in writing,
- 13 before any solicitation of the arbitrator, to allow offers of future
- 14 employment as a dispute resolution neutral to be made to the
- 15 arbitrator.

SEC. 2. Section 1281.85 of the Code of Civil Procedure is amended to read:

1281.85. (a) Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. The Judicial Council shall adopt ethical standards for all neutral arbitrators effective July 1, 2002. These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but shall not limit the disclosure and disqualification requirements established by this chapter. The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

(b) Subdivision (a) does not apply to an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

(c) The ethics requirements and standards of this chapter are nonnegotiable and shall not be waived.

(d) A party may recover costs incurred in an arbitration proceeding from a private arbitration company if the arbitration award is vacated ~~because of a violation of the ethical standards adopted by the Judicial Council pursuant to this section or a violation of the disclosure requirements established by this chapter.~~ *pursuant to Section 1286.2.* A party may also petition the court to recover costs incurred in an arbitration proceeding from a private arbitration company if the arbitrator is dismissed during the pendency of the arbitration because of a violation of the ethical standards adopted by the Judicial Council pursuant to this section or a violation of the disclosure requirements established by this chapter.

SEC. 3. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt

1 that the proposed neutral arbitrator would be able to be impartial,
2 including all of the following:

3 (1) The existence of any ground specified in Section 170.1 for
4 disqualification of a judge. For purposes of paragraph (8) of
5 subdivision (a) of Section 170.1, the proposed neutral arbitrator
6 shall disclose whether or not he or she has a current arrangement
7 concerning prospective employment or other compensated service
8 as a dispute resolution neutral or is participating in, or, within the
9 last two years, has participated in, discussions regarding such
10 prospective employment or service with a party to the proceeding.

11 (2) Any matters required to be disclosed by the ethics standards
12 for neutral arbitrators adopted by the Judicial Council pursuant to
13 this chapter.

14 (3) The names of the parties to all prior or pending noncollective
15 bargaining cases in which the proposed neutral arbitrator served
16 or is serving as a party arbitrator for any party to the arbitration
17 proceeding or for a lawyer for a party and the results of each case
18 arbitrated to conclusion, including the date of the arbitration award,
19 identification of the prevailing party, the names of the parties'
20 attorneys, and the amount of monetary damages awarded, if any.
21 In order to preserve confidentiality, it shall be sufficient to give
22 the name of any party who is not a party to the pending arbitration
23 as "claimant" or "respondent" if the party is an individual and not
24 a business or corporate entity.

25 (4) The names of the parties to all prior or pending noncollective
26 bargaining cases involving any party to the arbitration or lawyer
27 for a party for which the proposed neutral arbitrator served or is
28 serving as neutral arbitrator, and the results of each case arbitrated
29 to conclusion, including the date of the arbitration award,
30 identification of the prevailing party, the names of the parties'
31 attorneys and the amount of monetary damages awarded, if any.
32 In order to preserve confidentiality, it shall be sufficient to give
33 the name of any party not a party to the pending arbitration as
34 "claimant" or "respondent" if the party is an individual and not a
35 business or corporate entity.

36 (5) Any attorney-client relationship the proposed neutral
37 arbitrator has or had with any party or lawyer for a party to the
38 arbitration proceeding.

39 (6) Any professional or significant personal relationship the
40 proposed neutral arbitrator or his or her spouse or minor child

1 living in the household has or has had with any party to the
2 arbitration proceeding or lawyer for a party.

3 (7) For a consumer arbitration case, any solicitation made within
4 the last two years by, or at the direction of, the private arbitration
5 company to a party or lawyer for a party to the consumer
6 arbitration. During the pendency of the consumer arbitration, no
7 solicitation shall made of a party to the arbitration or of a lawyer
8 for a party to the arbitration. For purposes of this paragraph,
9 “solicitation” includes an oral or written request for arbitration
10 business, but does not include advertising directed to the general
11 public or communications indicating a general willingness to serve
12 as an arbitrator or private arbitration company.

13 (b) Subject only to the disclosure requirements of law, the
14 proposed neutral arbitrator shall disclose all matters required to
15 be disclosed pursuant to this section to all parties in writing within
16 10 calendar days of service of notice of the proposed nomination
17 or appointment.

18 (c) For purposes of this section, “lawyer for a party” includes
19 any lawyer or law firm currently associated in the practice of law
20 with the lawyer hired to represent a party.

21 (d) For purposes of this section, “prior cases” means
22 noncollective bargaining cases in which an arbitration award was
23 rendered within five years prior to the date of the proposed
24 nomination or appointment.

25 (e) For purposes of this section, “any arbitration” does not
26 include an arbitration conducted pursuant to the terms of a public
27 or private sector collective bargaining agreement.